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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
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10 ESTELLA F. HUGHES,  
11 Plaintiff,  
12 v.

13 LINCARE, INC., a Delaware corporation;  
14 LINCARE HOLDINGS, INC., a Delaware  
15 corporation; ROBERT FOSDICK; and  
16 DOES 1 through 20, inclusive,  
17 Defendants.

Case No. 14-cv-05350 NC

**SECOND ORDER RE:  
SUPPLEMENTAL SUBMISSIONS  
ON MOTION FOR REMAND**


18 The Court previously ordered defendants to submit further evidence substantiating  
19 their assumptions regarding the work-related miles driven by the putative class members  
20 for purposes of determining the amount in controversy in this case. Dkt. No. 23. In  
21 response, defendants submitted a declaration which states that, based on a review of  
22 Lincare records from January 1, 2014 through June 30, 2014, “those employees submitting  
23 mileage reimbursement during that time period claim to have driven an average of 1,448  
24 miles each month on behalf of the Company.” Dkt. No. 27-1 at 2-3. Defendants then  
25 multiply the average amount by the total number of months worked by the 842 putative  
26 class members. *See* Dkt. No. 17-1 at 2; 27 at 3. However, the declaration does not indicate  
27 whether all the employees in the sample period submitted mileage reimbursement requests  
28 for all the months in that period. Plaintiff asserts that she will not seek recovery on her

1 behalf and on behalf of the class members for any mileages beyond what is within  
2 defendants' records. Dkt. No. 30 at 2. Thus, if a small percentage of employees in the  
3 putative class submitted mileage reimbursement requests, this would significantly reduce  
4 the estimated amount in controversy. And even if plaintiff were seeking recovery for miles  
5 for which no reimbursement requests were submitted, there is no evidentiary basis  
6 presented to estimate the amount of such miles.

7 Defendants do not dispute that they have in their possession the records to show how  
8 many miles each putative class member drove. If defendants choose to rely on a sampling  
9 to establish the amount in controversy, they must provide a factual basis for their  
10 assumption that every putative class member submitted a reimbursement request for every  
11 single month in the class period. Defendants must, at the very least, provide a  
12 supplemental declaration indicating (1) the total number of putative class members for each  
13 month in the sample period; and (2) the number of putative class members who submitted  
14 mileage reimbursement requests for each month in the sample period. This declaration and  
15 any supplemental brief, which must not exceed 3 pages, must be filed by March 25, 2015.  
16 By March 30, plaintiff may file a response to defendants' supplemental submission, limited  
17 to 3 pages, accompanied by any declarations or other evidence.

18 IT IS SO ORDERED.

19 Date: March 19, 2015

  
Nathanael M. Cousins  
United States Magistrate Judge